Washington State Community, Trade and Economic Development

ESHB 1724

MAKING LAND USE REFORM WORK IN YOUR COMMUNITY

Land use is a key issue for local governments. A state law passed in 1995, referred to by its bill number ESHB 1724, restructures the local land use permit process. The goal is to better enable citizens and developers to know what to expect from the local permit process. The reform law changes the following state laws that govern local land use decision-making.

GMA

The Growth Management Act, enacted in 1990, requires most cities and counties to manage growth while meeting certain goals.

SEPA

The State Environmental Policy Act, enacted in 1971, requires state and local agencies to consider the environmental impacts of their proposed actions.

SMA

The Shoreline Management Act, enacted in 1971, requires local governments with shorelines to develop a shoreline master plan that identifies allowed shoreline land uses.

WHAT THE LAND USE REFORM LAW REQUIRES

The land use reform law amends the GMA, SEPA, and SMA to make planning work better and make permitting easier. Shoreline planning is combined with GMA planning. Policies of a local government's shoreline master program are required to be an element of its GMA comprehensive plan. The shoreline permit process is to be more closely tied to other local government permitting. Environmental analysis required by SEPA for comprehensive plans and development regulations should be used by local governments to analyze the impacts of permit applications.

By March 31, 1996, all local government are required, by ordinance or resolution, to:

Combine environmental review with permit review for making project decisions.

Allow not more than one open record hearing and one closed record appeal hearing.

- An open record hearing creates local government's record through testimony and information that is submitted before a permit decision is made.
- A closed record appeal is an administrative appeal to a local government body or officer after an open record hearing on a project permit application. No new evidence or only limited new evidence may be submitted and only appeal arguments are allowed.

In addition, local governments planning under the GMA are required to:

- Notify the applicant within 28 days that the application is complete or specify information needed to make it complete.
- Notify the public and other departments and agencies with jurisdiction that an application has been received within 14 days after it is determined the application is complete.
- Issue a notice of final decision on a permit application within 120 days after notifying the applicant that an application is complete. (The 120-day "countdown" stops when an applicant is asked to provide additional information but the countdown resumes 14 days after the information is provided.) A local government and an applicant may agree to extend the 120-day time period. (This requirement expires June 30, 1998.)
- Offer a consolidated permit process to allow applicants to apply for a variety of permits simultaneously.

A local government is not liable for damages due to the failure to make a final decision within the 120-day time period.

KEY ISSUES

Early Assessment of Project Impacts

Limiting the number of hearings and requiring a final decision within 120 days means that early assessment of project impacts will be more important than ever. Preapplication meetings are encouraged under the 1995 reform law. This gives the applicant, staff, and affected parties an opportunity to share information and resolve issues early in the process.

Costs Related to Environmental Review

Currently, applicants often pay for environmental review costs connected with development activity. Local governments will bear the initial costs of detailed environmental review when it is done at the comprehensive planning level, as is encouraged by this law. The advantage is that environmental issues and infrastructure impacts are identified up-front, so they can be dealt with more easily as permits are issued. This way developers and the public will know what to expect when further projects are approved for an area. The disadvantage is that local governments often don't have the resources to pay for detailed environmental review.

NEW WAYS OF DOING BUSINESS

Public Hearings

Some local governments have held a public hearing on a proposed project before the planning commission and another public hearing before the council or commission. Now cities and counties must decide which body will hold the open record hearing or whether to delegate this responsibility to a hearings examiner.

Under the GMA and regulatory reform, project review for a new development starts with the decisions a local government has already made in its comprehensive plan and development regulations. These issues cannot be reexamined during the permit or appeals processes for a project.

For example, when a public hearing occurs on a housing development, it's usually too late to object to the type and density of the development, if it's consistent with the adopted plan and development regulations.

A proposed project will be reviewed for both consistency and environmental impacts at the same time. One coordinator may be designated to be responsible for a project and one report is written that includes both land use and environmental recommendations.

Consolidated Permits

Under the reform law, the land use applicant may choose to get multiple permits processed at the same time. For example, if a conditional use permit for a project is needed, it could be processed with the permit application. (Conditional uses are proposed projects that require special approval to be allowed in a zone. For example, a school may need a conditional use permit to locate in a residential zone.)

Consistency and Environmental Review

Local governments planning under the GMA must analyze a project for its consistency with the comprehensive plan and development regulations. At the same time, the project's environmental impacts should be identified.

The project should be reviewed for its consistency with land use designations, levels of density or intensity, availability of infrastructure, and character of development.

Local governments must look at broad environmental reports completed in the planning stage to see if there is enough information on the project's impacts to avoid repeating environmental review at the project review stage.

A local government should review the environmental studies prepared for its comprehensive plan, subarea plan, or development regulations to see if the environmental impacts for the proposed development are adequately identified. If so, the local government should rely on that study to determine how the environmental impacts of projects implementing the approved plan will be addressed.

Limited Use of SEPA

Local governments need to look at whether their local regulations can adequately address the environmental impacts of proposed projects. Each project must be reviewed and the impacts identified before it can be determined whether the impacts have been addressed in the regulations. SEPA is to be used to provide remedies for impacts only when there are gaps in local rules or environmental studies.

Docketing Amendments

The reform law seeks to make sure that major issues that should be part of the comprehensive plan process are not debated when a permit is being reviewed.

Local government officials are required to "docket" amendments to plans and regulations suggested by applicants, citizens, or agency staff who identify deficiencies in the course of project review on a permit. These items will be debated during the process cities and counties establish for amending comprehensive plans and development regulations.

Critical Area Protection Clarified

Critical areas as defined by the GMA include wetlands, geologically hazardous areas, fish and wildlife habitat conservation areas, aquifer recharge areas, and frequently flooded areas. Under the reform law:

- Cities and counties are required to rely on best available science in designating and protecting critical areas.
- Growth management hearing boards may use scientific experts to assist in evaluating critical area protection.

For information and assistance, call:

WASHINGTON STATE COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

Growth Management Services
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Olympia, WA 98504-8300
360-753-2222

STATE REGULATORY REFORM RESOURCES

Funding for Pilot Projects

The Legislature established the Growth Management Planning and Environmental Review Fund for two years to help local governments pay for additional pilot projects at the local level for integrating comprehensive planning and environmental review. Future funding options are being studied.

Land Use Study Commission

The Legislature created a Land Use Study Commission to evaluate state land use and environmental laws with the goal to integrate them into a single, manageable statute. The commission will monitor local government consolidated permit procedures and effectiveness of the 120-day timeline. The commission will sunset in 1998.

Technical Assistance

The Washington State Department of Community, Trade and Economic Development is providing technical assistance to help carry out the new land use requirements.